

G,E-001/M-90-875 ORDER DISMISSING DEPARTMENT'S COMPLAINT AND
APPROVING COMPANY'S REFUND OF OVERCHARGES WITHOUT INTEREST

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Complaint by
the Minnesota Department of
Public Service Against
Interstate Power Company
Regarding the Charging of Rates
Different from its Tariffed
Rates

ISSUE DATE: November 13, 1991

DOCKET NO. G,E-001/M-90-875

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PROCEDURAL HISTORY

On October 22, 1990, Interstate Power Company (Interstate, the Company) filed a request with the Commission for a variance to Minn. Rules, part 7820.3800, which limits refunds for billing errors to one year. Interstate requested the variance to allow it to refund 17 years of overcharges collected from six of its large power and light customers. The overcharges resulted from a billing error that first occurred in 1973. The billing error was discovered by Interstate from its own internal audit in 1990; neither the overcharged customers nor the Department of Public Service (Department) were aware of the billing errors until the Company came forward with the results of its audit.

On December 18, 1990, the Department filed a recommendation with the Commission supporting Interstate's request for a rule variance and recommending further that the Commission order the Company to pay compound interest on the overcharges. The overcharges were approximately \$323,641. The Department estimated the interest on the overcharges, compounded annually from 1973 to 1990, would be in excess of \$221,000.

On December 24, 1990, Interstate filed a petition requesting permission to withdraw its earlier request for a variance. The petition stated the Company's intention to proceed with the refund of the overcharges, without interest, since its variance request had been pending for over two months without Commission action. The Commission asked the Department to comment on this petition.

On March 4, 1991, the Department filed comments opposing Interstate's request to withdraw its variance request and reiterating its position that the Company should be ordered to pay interest. On March 16, 1991, the Company filed reply comments arguing that the variance issue was moot and that the Commission did not have authority to order the payment of interest.

On April 16, 1991, the Department filed a complaint against Interstate regarding the 17 years of overcharges. The complaint asked the Commission to order the Company to pay reasonable interest. On May 6, 1991, the Company filed an answer and a motion to dismiss the complaint, asserting the complaint had not been properly verified and that the remedy sought was not in the public interest. On May 16, the Department filed reply comments.

This matter came before the Commission on October 22, 1991.

FINDINGS AND CONCLUSIONS

Sometime in 1990, Interstate found through its own internal audit that six of its large power and light customers had not been receiving the "primary metering discounts" to which they were entitled under the Company's tariff. Some of these billing errors date back to September 1973, resulting in a total overcharge to the companies of \$323,641.71.

Interstate has already refunded the overcharged principal collected during the 17 year period before the billing error was discovered. Therefore, the Commission need not address the Company's petition for a rule variance to allow the refund or the Company's request to withdraw its variance petition. The remaining issue is whether the Commission should order the Company to pay interest on the overcharged amount. This issue was raised by the Department in its filings in this matter, including its April 16 complaint. The Commission concludes that it has the legal authority to require the payment of interest, but that it would not be reasonable to order Interstate to pay interest in this instance.

Legal Authority

The Commission's legal authority to require the payment of interest on overcharges is set forth in Minn. Stat. § 216B.23, subd. 2 (1990), which provides that the Commission:

shall determine and by order fix reasonable measurements, regulations, acts, practices or service . . . and shall make any other order respecting the measurement, regulation, act, practice or service as shall be just and reasonable.

The broad language of this statute clearly encompasses the authority to order the payment of interest on overcharges. The question in any such case is whether the payment of interest would be just and reasonable. Therefore, whether Interstate should be required to pay interest on the excess collected during the 17 year period in question is an issue of policy, not legal authority.

Policy Considerations

The Commission commends the Department for bringing this issue to its attention. A customer's loss of interest income from a utility's overcharges is always of great concern to the Commission. Nevertheless, the Commission must consider the unique circumstances of each case to determine whether the inclusion of interest in a refund for overcharges would be just and reasonable. The Commission finds that the facts of this case do not justify an order requiring the payment of interest.

The Company has acted responsibly in this matter. There is no evidence that the billing error made over 17 years ago was intentional. Indeed, the error was discovered and voluntarily brought to the Commission's attention by the Company. It is doubtful the error would have become known in the normal course of the regulatory process. If not for the Company's audit and candor in revealing the results of the audit, the overcharge probably would have gone unnoticed indefinitely. The Commission is concerned that an order requiring Interstate to pay interest here may discourage other companies from coming forward in a similar fashion in the future. This would clearly be contrary to the public interest.

The Commission emphasizes further that the customers overcharged by Interstate in this matter have acquiesced in the Company's payment of the principal without interest. They met with the Company, accepted the refund and declined comment in this proceeding. These customers are large businesses with the resources and sophistication to assert and protect their financial interests in dealings with Interstate and in matters brought before the Commission. As such, the customers appear satisfied with the relief they have received. Considering the good faith and responsible conduct of the Company in this case, requiring the additional payment of interest would not be appropriate.

ORDER

1. The Department's petition to require the payment of interest is dismissed and Interstate's refund of the principal amount of the overcharge is approved.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)